

7-28-10
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PTO/SB/65 (03-09)

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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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**PETITION TO ACCEPT UNAVOIDABLY DELAYED PAYMENT OF
MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(b))**

Docket Number (Optional)
01098-32767

Mail to: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450
Fax: (571) 273-8300

RECEIVED

AUG 11 2010

OFFICE OF PETITIONS

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at
(571) 272-3282.

Patent Number: 5,420,107

Application Number: 279,829

Issue Date: May 30, 1995

Filing Date: July 25, 1994

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number (or reissue patent number, if a reissue) and (2) the application number of the actual U.S. application (or reissue application) leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

Also complete the following information, if applicable:

The above-identified patent:

08/09/2010 DALLEN 00000012 5420107

☐ is a reissue of original Patent No. _____

01 FC:1599
original issue date _____ 2755.00 OP

original application number _____

original filing date _____

☐ resulted from the entry into the U.S. under 35 U.S.C. 371 of international application
_____ filed on _____

CERTIFICATE OF MAILING OR TRANSMISSION (37 CFR 1.8(a))

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is

(1) being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 OR

(2) transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

07/22/2010

Date

Signature

George A. Brooks

Typed or printed name of person signing Certificate

[Page 1 of 4]

This collection of information is required by 37 CFR 1.378(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

1. SMALL ENTITY

☒ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27

2. LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

3. MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition, unless it was paid earlier.

NOT Small Entity			Small Entity		
Amount	Fee	(Code)	Amount	Fee	(Code)
<input type="checkbox"/> \$ _____	3 ½ yr fee	(1551)	<input type="checkbox"/> \$ _____	3 ½ yr fee	(2551)
<input type="checkbox"/> \$ _____	7 ½ yr fee	(1552)	<input type="checkbox"/> \$ _____	7 ½ yr fee	(2552)
<input type="checkbox"/> \$ _____	11 ½ yr fee	(1553)	<input type="checkbox"/> \$ <u>2055.00</u>	11 ½ yr fee	(2553)

MAINTENANCE FEE BEING SUBMITTED \$ 2055.00

4. SURCHARGE

The surcharge required by 37 CFR 1.20(i)(1) of \$ 700.00 (Fee Code 1557) must be paid as a condition of accepting unavoidably delayed payment of the maintenance fee.

SURCHARGE FEE BEING SUBMITTED \$ 700.00

5. MANNER OF PAYMENT

- ☐ Enclosed is a check for the sum of \$ _____
- ☐ Please charge Deposit Account No. _____ the sum of \$ _____ .
- ☒ Payment by credit card. Form PTO-2038 is attached.

6. AUTHORIZATION TO CHARGE ANY FEE DEFICIENCY

☐ The Director is hereby authorized to charge any maintenance fee, surcharge or petition fee deficiency to Deposit Account No. _____ .

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7. OVERPAYMENT

As to any overpayment made, please

☐ Credit to Deposit Account No. _____

OR

☒ Send refund check

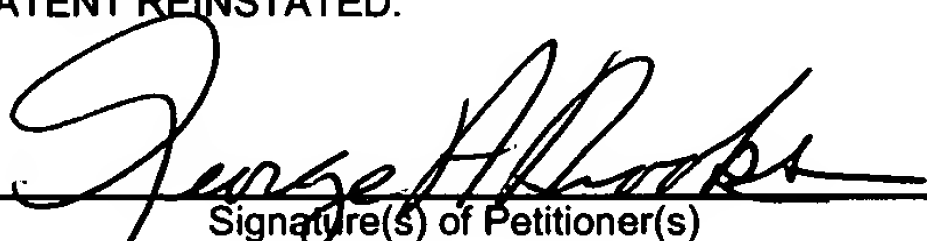
WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

8. SHOWING

The enclosed statement will show that the delay in timely payment of the maintenance fee was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that this petition is being filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The statement must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which the patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

9. PETITIONER(S) REQUESTS THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED.



Signature(s) of Petitioner(s)

07/22/2011

Date

George A. Brooks

n/a

Typed or printed name(s)

Registration Number, if applicable

1501 Everett Ave.
Oakland, CA 94602

510-332-8258

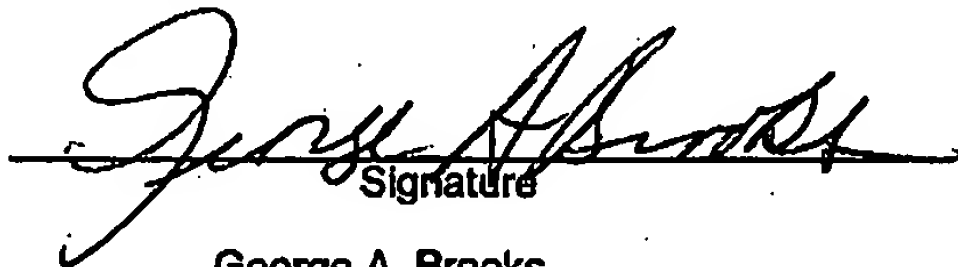
Telephone Number

Address

ENCLOSURES:

- ☒ Maintenance Fee Payment
☒ Statement why maintenance fee was not paid timely
☒ Surcharge under 37 CFR 1.20(i)(1) (fee for filing the maintenance fee petition)
☒ Other: Exhibits to Statement and Form PTO-2038 for credit card payment

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."


Signature

George A. Brooks

Type or printed name

07/22/2010

Date

n/a

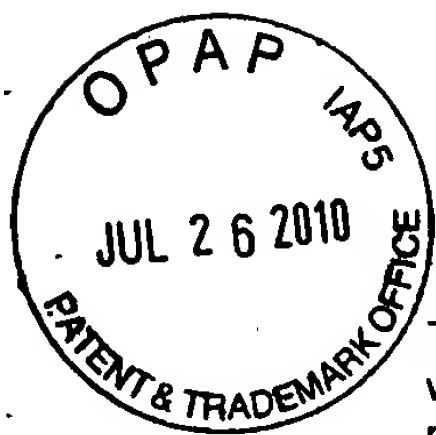
Registration Number, if applicable

STATEMENT

(In the space below, please provide the showing of unavoidable delay recited in paragraph 8 above.)

See Attached Statement.

(Please attach additional sheets if additional space is needed)



Privacy Act Statement

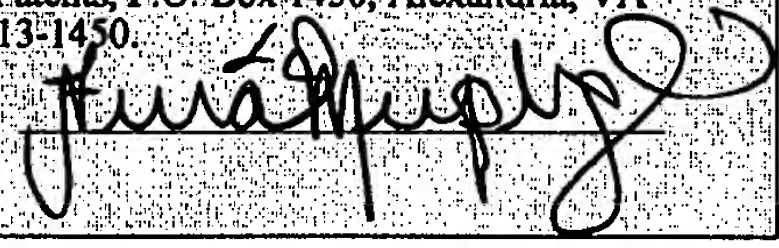
The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

FIRST NAMED INVENTOR: George A. Brooks	CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8 DATE OF DEPOSIT: July 26 2010 I hereby certify that this paper or fee (along with any paper or fee referred to as being attached or enclosed) is being deposited with the United States Postal Service with sufficient postage as first class mail on the date indicated above and is addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450. 
SERIAL NO.: 279,829	
PATENT NO.: 5,420,107	
FILED: July 25, 1994	
ISSUED: May 30, 1995	
FOR: Method and Composition for Energy Source Supplementation During Exercise and Recovery	
DOCKET NO.: 01098-32767	RECEIVED

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

AUG 11 2010

OFFICE OF PETITIONS

STATEMENT OF GEORGE A. BROOKS IN SUPPORT OF
HIS PETITION TO ACCEPT UNAVOIDABLY DELAYED PAYMENT OF
MAINTENANCE FEE IN AN EXPIRED PATENT UNDER 37 CFR 1.378(b)

Dear Sir:

Pursuant to 37 C.F.R. § 1.378(b), Petitioner hereby submits this statement (with exhibits), together with his Petition to Accept Unavoidably Delayed Payment of Maintenance Fee in an Expired Patent. In addition, Petitioner is submitting herewith the required maintenance fee set forth in 37 C.F.R. 1.20(g) (\$2,055.00), and the surcharge set forth in 37 C.F.R. 1.20(i)(1) (\$700.00).

I. Introduction

This statement will show that the delay in timely payment of the maintenance fee was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that this petition is being filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. This statement

enumerates the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which the patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

II. *Facts and Steps Showing that Reasonable Care Was Taken to Ensure That the Maintenance Fee Would Be Paid Timely*

- Patentee, Dr. George A. Brooks (hereinafter "Brooks") retained Pillsbury Winthrop Shaw Pittman, LLP ("Counsel") to represent him before the U.S. Patent and Trademark Office ("PTO") in the prosecution of U.S. Patent Application No. 279,829, now known as U.S. Patent No. 5,420,107, entitled *Method and Composition For Energy Source Supplementation During Exercise and Recovery* (the "107 Pat."). Counsel represented Brooks throughout prosecution of the 107 Pat. and continued to represent Brooks and pay maintenance fees to the PTO with respect to the 107 Pat. on Brooks' behalf. More specifically, Counsel submitted the 4th year and 8th year maintenance fees on Brooks' behalf. A printout of the Patent Bibliographic data for the 107 Pat. shows Counsel's address as the "Address for fee purposes" (a copy of the patent bibliographic data for the 107 Pat. is attached hereto).
- On or about May 30, 2002 (after the 107 Pat. had issued), Brooks filed U.S. Patent Application No. 10/158,584, now known as U.S. Patent No. 6,743,821 entitled *Glycerol-Lactate Esters for Use as and Energy Supplement During Exercise and Recovery* (the "821 Pat."). Again, Brooks retained Counsel to represent him before the PTO with respect to prosecution of the 821 Pat.
- On or about May 20, 2003, Brooks advised Counsel that he no longer wanted Counsel to continue prosecuting the 821 Pat., which was pending at that time. Brooks had decided that he would prosecute the 821 Pat. pro se before the PTO. These instructions are confirmed and referenced in an e-mail dated May 30, 2003 from Counsel to Brooks, a copy of which is attached hereto. Thereafter, proper measures were taken to amend the correspondence address from Counsel's address to Brooks' address. This is referenced by the fact that the patent bibliographic data for the 821 Pat. lists Brooks' address as the "address for fee purposes" (copy of patent bibliographic data for the 821 Pat. attached hereto). Brooks does not recall instructing Counsel, and the e-mail dated May 30, 2003 does not reference any instructions for Counsel to cease representing Brooks and making payments on Brooks' behalf with respect to the 107 Pat. It was Brooks' understanding that Counsel would still act on Brooks' behalf with respect to the 107 Pat.
- Brooks continued to represent himself pro se before the PTO with respect to the 821 Pat., which issued on June 1, 2004. Subsequently, on July 24, 2007, Brooks proceeded to pay the 4th year maintenance fee with respect to the 821 Pat. Brooks continued to rely on Counsel to handle maintenance fees and relevant matters pertinent to the 107 Pat. Up to that time, Counsel had been diligent in advising

Brooks of maintenance fee deadlines with respect to the 107 Pat. Brooks reasonably relied on Counsel to advise him with respect to any other maintenance fees pertaining to the 107 Pat. and had no reason to believe that Counsel had ceased representing him before the PTO. In fact, Counsel continues to be listed as the addressee for fee purposes in the PTO records for the 107 Pat.

- In view of the foregoing, Brooks reasonably believed that Counsel was continuing to represent him with respect to the 107 Pat., and that Counsel would timely handle all matters and payment of maintenance fees pertaining to the 107 Pat. Thus, Brooks' delay in payment of the 12th Year maintenance fee for the 107 Pat. was unavoidable.

III. Facts and Steps Showing that This Petition is Being Filed Promptly After the Patentee Was Notified of, or Otherwise Became Aware of, the Expiration of the Patent.

- On or about July 2003, Brooks licensed the 107 Patent to a third party entity ("Third Party") for use in connection with the production and distribution of dietary and nutritional products. Since the date of the license, the Third Party has continued to produce and distribute products consistent with the terms of the license.
- On or about June 23, 2010, the Third Party licensee discovered, through the performance of routine due diligence, that it appeared that the 107 Pat. had expired on May 30, 2007. The Third Party then immediately began reviewing PTO public records to verify whether the 107 Pat. had, in fact, expired.
- Upon confirming expiration of the 107 Pat. based on failure to pay the 12th Year maintenance fee, the Third Party contacted Brooks. Such contact took place between June 23, 2010 and June 29, 2010. Immediately upon learning that the 107 Pat. had expired Brooks began searching his records to verify whether there were any records referencing the 12th year maintenance fee for the 107 Patent. Of course, Brooks did not have any such records since all notices from the PTO regarding the maintenance fee had been going to Counsel's address. Brooks also began searching his files in order to show that the delay in filing the maintenance fee was unavoidable, and to show that he reasonably believed that Counsel was still handling the maintenance of the 107 Pat. on his behalf.
- Upon compiling all relevant information, Brooks immediately began preparing this Petition to Accept Unavoidably Delayed Payment of Maintenance Fee in Expired Patent. Brooks believes that he has taken appropriate steps to file this Petition promptly.

IV. Conclusion

In view of the foregoing, Brooks submits that he reasonably believed that Counsel was continuing to represent him before the PTO with respect to all matters pertaining to the 107 Pat., including payment of and notification regarding maintenance fees. PTO records show that Counsel has not removed itself from being listed as the correspondent, and that Counsel's address is still listed as the address for fee purposes.

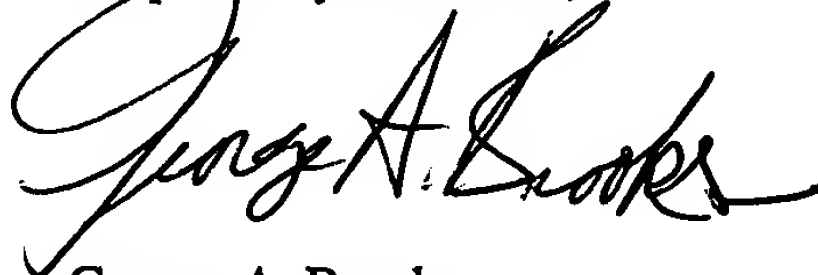
Apparently, Counsel believed that it no longer represented Brooks with respect to the 107 Pat., and thus failed to notify Brooks concerning the deadline to pay the maintenance fees and also did not submit payment of the 12th year maintenance fees to the PTO on Brooks' behalf.

Brooks submits that he took reasonable care to ensure that the maintenance fee would be paid. More specifically, Brooks put his trust in his Counsel and relied on his Counsel to represent his interests before the PTO with respect to the 107 Pat. Counsel had worked closely with Brooks in submitting the 4th and 8th year maintenance fees for the 107 Pat., and Brooks had no reason to believe that Counsel would not be representing him with respect to the 12th year maintenance fee. Brooks should not suffer the loss of patent rights based on the failure of his trusted Counsel to timely submit the 12th year maintenance fee.

Since learning that the 107 expired based on failure to timely submit the maintenance fees, Brooks has taken steps to file this petition promptly. Accordingly, Brooks respectfully requests that this Petition be granted and that the 107 Pat. be reinstated.

Dated this 22 day of July 2010.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "George A. Brooks".

George A. Brooks

Encl.



United States
Patent and
Trademark Office

Patent Bibliographic Data				07/16/2010 01:23 PM	
Patent Number:	5420107	Application Number:	08279829		
Issue Date:	05/30/1995	Filing Date:	07/25/1994		
Title:	METHOD AND COMPOSITION FOR ENERGY SOURCE SUPPLEMENTATION DURING EXERCISE				
Status:	Expired for non-payment on: 05/30/2007			Entity:	Small
Window Opens:	05/30/2006	Surcharge Date:	12/01/2006	Expiration:	05/30/2007
Fee Amt Due:	\$0.00	Surchg Amt Due:	\$0.00	Total Amt Due:	\$0.00
Fee Code:					
Surcharge Fee Code:					
Most recent events (up to 7):	05/30/2007 Patent Expired for Failure to Pay Maintenance Fees. 12/13/2006 Maintenance Fee Reminder Mailed. 10/28/2002 Payor Number Assigned. 10/18/2002 Payment of Maintenance Fee, 8th Yr, Small Entity. 02/11/1999 Payment of Maintenance Fee, 4th Yr, Small Entity. 02/11/1999 Surcharge for late Payment, Small Entity. 12/22/1998 Maintenance Fee Reminder Mailed. — End of Maintenance History —				
Address for fee purposes:	PILLSBURY WINTHROP SHAW PITTMAN, LLP P.O. BOX 10500 MCLEAN, VA 22102				
NOTE: All USPTO fees are subject to change. If you are making a payment by mail or fax, please visit this link or contact the Maintenance Fee Branch (571-272-6500) to confirm the amount due on the date payment is to be made. A maintenance fee payment can be timely made using the certificate of mailing or transmission procedure set forth in 37 CFR 1.8.					
Run Another Query					

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Massie, Karyn F.

From: Massie, Karyn F.
Sent: Friday, May 30, 2003 9:18 AM
To: 'gbrooks@socrates.Berkeley.EDU'; Wetherell, John R.
Cc: Bedgood, Robert M.; 'robert bedgood'
Subject: Filing Deadline of June 10, 2003

Dear Dr. Brooks:

Further to our conversation of May 20, 2003, I am confirming your instructions that you do not want us to continue prosecuting the "Glycerol-lactate esters for use as an energy supplement during exercise and recovery" patent application with serial number 10/158,584 on your behalf. During our conversation you indicated written instructions advising us not to proceed were in draft format and would be arriving shortly. I have not received correspondence from you regarding the response due on June 10, 2003. Please be advised, without your specific instructions to continue prosecuting this matter including responding to the June 10, 2003 deadline, we will NOT prepare a response. The June 10, 2003 is the final date for responding. There are no extensions of time beyond that date. Without your response submitted by that date, the application will go abandoned.

If you have any questions regarding this matter please do not hesitate to contact me.

Karyn F. Massie
Pillsbury Winthrop
11682 El Camino Real, Suite 200
San Diego, CA 92130-1593
Direct Line: (858)509-4018
kmassie@pillsburywinthrop.com

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Patent and
Trademark Office**

Patent Bibliographic Data				07/16/2010 11:47 AM	
Patent Number:	6743821		Application Number:	10158584	
Issue Date:	06/01/2004		Filing Date:	05/30/2002	
Title:	GLYCEROL-LACTATE ESTERS FOR USE AS AN ENERGY SUPPLEMENT DURING EXERCIS				
Status:	8th year fee window opens: 06/01/2011			Entity:	Small
Window Opens:	06/01/2011	Surcharge Date:	12/02/2011	Expiration:	N/A
Fee Amt Due:	Window not open	Surchg Amt Due:	Window not open	Total Amt Due:	Window not open
Fee Code:	2552	MAINTENANCE FEE DUE AT 7.5 YEARS			
Surcharge Fee Code:					
Most recent events (up to 7):	07/24/2007	Payment of Maintenance Fee, 4th Yr, Small Entity. --- End of Maintenance History ---			
Address for fee purposes:	GEORGE A. BROOKS 1415 RICHMOND STREET EL CERRITO, CA 94530				
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